

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 28, 2021**

NEXGEL, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

000-56066

(Commission File Number)

26-4042544

(IRS Employer
Identification No.)

**2150 Cabot Boulevard West, Suite B
Langhorne, Pennsylvania**

(Address of principal executive offices)

19067

(Zip Code)

Registrant's telephone number, including area code: **(215) 702-8550**

(Former name or former address, if changed since last report)

Not Applicable

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None

Title of each class

**Trading
Symbol(s)**

**Name of each exchange on which
registered**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry Into a Material Definitive Agreement.

On October 28, 2021, NexGel, Inc., a Delaware corporation (the “**Company**”), entered into a Second Amendment to the Senior Secured Promissory Note, Warrants, and Securities Purchase Agreement dated March 11, 2021 (the “**Second Amendment**”) with Auctus Fund, LLC, a Delaware limited liability company (“**Auctus**”).

As background and pursuant to a Securities Purchase Agreement (the “**Purchase Agreement**”) dated March 11, 2021 (the “**Closing Date**”), on the Closing Date the Company issued to Auctus a Senior Secured Promissory Note in the original principal amount of \$1,500,000 (the “**Note**”), a First Warrant and a Second Warrant (as such terms are defined in the Purchase Agreement”). On the Closing Date, Company and Auctus also entered into a Security Agreement (among other agreements) whereby the Company agreed to secure the obligations under the Note with all of its assets (the “**Security Agreement**”). The Auctus Note transaction is more fully described in a Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on March 17, 2021. On August 13, 2021 the Company and Auctus entered into the First Amendment to the Senior Secured Promissory Note, Warrants, Security Agreement, and Securities Purchase Agreement as disclosed in the Company’s Form 10-Q for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on August 16, 2021, a copy of which is attached thereto as Exhibit 10.1 (the “**First Amendment**”).

The Second Amendment extended the period of time during which the Company is required to be quoted or listed (as applicable) on the OTCQB, OTCQX, any tier of the NASDAQ Stock Market, the New York Stock Exchange, or the NYSE American from October 31, 2021 (as a result of a previous extension) to December 15, 2021 (the “**Trading Date**”). Additionally, the Security Agreement will be automatically terminated if the Company is quoted or listed as described above by the Trading Date assuming no event of default then exists.

Except for extending the Trading Date as described above, the Second Amendment did not amend any other substantive terms of the Purchase Agreement, the Note, the Warrants, the Security Agreement, the First Amendment or any other agreements between the Company and Auctus.

The foregoing description of the Second Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of such document, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
<u>10.1</u>	<u>Second Amendment to the Senior Secured Promissory Note, Warrants, and Securities Purchase Agreement dated March 11, 2021, dated October 28, 2021, between the Company and Auctus Fund, LLC.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 3, 2021

NEXGEL, INC.

By: /s/ Adam Levy
Adam Levy
Chief Executive Officer

**SECOND AMENDMENT TO THE SENIOR SECURED PROMISSORY NOTE, WARRANTS, AND
SECURITIES PURCHASE AGREEMENT DATED MARCH 11, 2021**

THIS SECOND AMENDMENT to the Note (as defined below), Warrants (as defined below), and SPA (as defined below) (the "Amendment") is entered into on October 28, 2021 (the "Effective Date"), by and between Nexgel, Inc., a Delaware corporation (the "Company"), and Auctus Fund, LLC, a Delaware limited liability company (the "Holder") (each the Company and the Holder a "Party" and collectively the "Parties").

BACKGROUND

A. The Company and Holder are the parties to that certain securities purchase agreement (the "SPA") dated March 11, 2011, pursuant to which the Company issued to Holder a senior secured promissory note on even date in the original principal amount of \$1,500,000.00 (as amended from time to time, the "Note"), the Warrants (as defined in the SPA) (the "Warrants"), the Registration Rights Agreement (as defined in the SPA) (the "Registration Rights Agreement") and the Security Agreement (as defined in the SPA) (the "Security Agreement"); and

B. On August 13, 2021, the Company and the Holder entered into that certain First Amendment to the Senior Secured Promissory Note, Warrants, and Securities Purchase Agreement date March 11, 2021 (the "First Amendment"); and

C. The Parties desire to amend the Note, Warrants, SPA and First Amendment as set forth expressly below.

NOW THEREFORE, in consideration of the execution and delivery of the Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4(g) of the SPA shall be replaced in its entirety with the following:

"(g) Listing. The Company will, beginning on December 15, 2021 and continuing so long as the Buyer owns any of the Securities, maintain the listing and trading of its Common Stock on a Principal Market or any equivalent replacement exchange or electronic quotation system (including but not limited to the Pink Sheets electronic quotation system) and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Financial Industry Regulatory Authority ("FINRA") and such exchanges, as applicable. The Company shall promptly provide to the Buyer copies of any notices it receives from the Principal Market and any other exchanges or electronic quotation systems on which the Common Stock is then traded regarding the continued eligibility of the Common Stock for listing on such exchanges and quotation systems."

2. Section 3.18 of the Note shall be replaced in its entirety with the following:

"3.18 Delisting, Suspension, or Quotation of Trading of Common Stock If, at any time on or after December 15, 2021, the Borrower's Common Stock (i) is suspended from trading, (ii) halted from trading, and/or (iii) fails to be quoted or listed (as applicable) on the OTCQB, OTCQX, any tier of the NASDAQ Stock Market, the New York Stock Exchange, or the NYSE American."

3. Section 3.19 of the Note shall be replaced in its entirety with the following:

"3.19 Failure to File Form 211 or Registration Statement. The Borrower fails to (i) have caused a Form 211 to be filed with FINRA (as defined in the Purchase Agreement) that complies in all material respects with the requirements of FINRA within fifteen (15) calendar days following the Issue Date, (ii) file a registration statement covering the Holder's resale at prevailing market prices (and not fixed prices) of all of the Common Stock (the "Registration Statement") underlying the Note and Warrants within thirty (30) calendar days following the Issue Date, (ii) cause the Registration Statement to become effective on or before December 15, 2021, (iii) cause the Registration Statement to remain effective until the Note is extinguished in its entirety and the Warrants are exercised in the entirety, (iv) comply with the provisions of the Registration Rights Agreement in all material respects, or (v) immediately amend the Registration Statement or file a new Registration Statement (and cause such Registration Statement to become effective as soon as possible) if there are no longer sufficient shares registered under the initial Registration Statement for the Holder's resale at prevailing market prices (and not fixed prices) of all of the Common Stock underlying the Note and Warrants."

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4. The last sentence of Section 1 of the Security Agreement shall be replaced in its entirety with the following sentence:

"If, on or prior to December 15, 2021, (i) an Event of Default (as defined in this Agreement) has not occurred and (ii) the Borrower has complied in all material respects with the terms of the Registration Rights Agreement (as defined in the Securities Purchase Agreement), and (iii) the Common Stock (as defined in the Securities Purchase Agreement) is quoted or listed for trading on the OTCQB Marketplace, OTCQX, any tier of the NASDAQ Stock Market, the New York Stock Exchange, or the NYSE American, then the security interest created in favor of the Secured Party pursuant to this Agreement shall terminate."

5. This Amendment shall be deemed part of, but shall take precedence over and supersede any provisions to the contrary contained in the Note, Warrants, Registration Right Agreement, Security Agreement, SPA and First Amendment (in each case, as applicable). Except as specifically modified hereby, all of the provisions of the Note, Warrants, Registration Rights Agreement, Security Agreement, SPA and First Amendment which are not in conflict with the terms of this Amendment, shall remain in full force and effect.

[Signature page to follow]

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

Nexgel, Inc.

Auctus Fund, LLC

By: /s/ Adam Levy
Name: Adam Levy
Title: Chief Executive Officer

By: /s/ Lou Posner
Name: Lou Posner
Title: Managing Director

